No. 94-947

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

TOWN & COUNTRY ELECTRIC, INC., and AMERISTAFF PERSONNEL CONTRACTORS, LTD.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF *AMICUS CURIAE* OF THE LABOR POLICY ASSOCIATION IN SUPPORT OF THE RESPONDENTS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

24 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE *AMICUS CURIAE*	2
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	7
ARGUMENT	10
THE COURT OF APPEALS CORRECTLY HELD THAT PAID UNION "SALTS" WHO SEEK OR ACCEPT POSITIONS WITH AN EMPLOYER AT THEIR UNION'S DIRECTION AND UNDER ITS CONTROL, FOR THE PURPOSE OF CARRYING OUT UNION OBJECTIVES THAT CONFLICT WITH THE EMPLOYER'S INTERESTS, ARE NOT "EMPLOYEES" WITHIN THE PROTECTION OF THE NATIONAL LABOR RELATIONS ACT	10
A. "Salting" by Paid Union Agents Inherently Conflicts with the Targeted Employer's Interests	10
B. The Court of Appeals Correctly Concluded that the Inherent Conflict of Interests Between the Salts and the Targeted Employer in this Case Precluded a Finding that the Salts Were "Employees" within the Meaning of the NLRA	17
C. Extending the NLRA's Protection of "Employees" to Paid Union Salts Runs Counter to the Act's Central Purposes of Promoting Industrial Peace and Employee Freedom of Choice	19
CONCLUSION	20

TABLE OF AUTHORITIES

CASES — Page

Arrow Flint Electric Co., NLRB Case No. 7-CA-35675, JD (MI)-215-94 (September 28, 1994) .. 15, 16

Consolidated Electrical Service, Inc., NLRB Case No. 3-CA-18188, JD (NY)-11-95 (February 9, 1995) 12, 14

Goodless Electric Co., NLRB Case No. 1-CA-31249, et al, JD (MA)-22-95 (March 2, 1995) 18

H.B. Zachry Co. v. NLRB, 886 F.2d 70 (4th Cir. 1989) 8, 19

J.P. Stevens v. NLRB, 380 F.2d 292 (2nd Cir. 1967), *cert. denied*, 393 U.S. 836 (1968) 20

Lechmere, Inc. v. NLRB, 112 S. Ct. 841 (1992) 7

NLRB v. Elias Bros. Big Boy, Inc., 327 F.2d 421 (6th Cir. 1964) 8, 19

Nationwide Mutual Insurance Co. v. Darden, 112 S. Ct. 1344 (1992) 8, 18

Sullivan Electric Co., NLRB Case No. 26-CA-16107, et al, JD (NY)-04-95 (February 1, 1995) 11, 12, 13

Sunland Construction, Inc., 309 N.L.R.B. 1224 (1992) 16, 20

Town & Country Electric, Inc. v. NLRB, 34 F.3d 625 (8th Cir. 1994) 4, 5, 6, 7, 16, 18

Waco, Inc., 316 N.L.R.B. No. 9 (January 23, 1995) 4, 5

STATUTES

National Labor Relations Act,

29 U.S.C. §§ 151, 157 (Supp. 1995) 8

29 U.S.C. § 152(3) 17

29 U.S.C. §§ 158(a) (1) and (3) 6

MISCELLANEOUS

IBEW Special Projects Department, *Salting as Protected Activity under the National Labor Relations Act* 1 (March, 1993) 11, 12, 13, 14

Herbert Northrup, *Salting the Contractors' Labor Force: Construction Unions Organizing with NLRB Assistance*, 14 Journal of Labor Research 169 (1993) 2, 11, 15

TABLE OF AUTHORITIES—Continued

Page

Edward Potter and Judith A. Youngman, *Keeping America Competitive: Employment Policy for the Twenty-First Century* (1994) 3

Restatement (Second) of Agency §§ 226, 387, 394 (1957) 8, 18

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BRIEF *AMICUS CURIAE* OF THE LABOR POLICY ASSOCIATION IN SUPPORT OF THE RESPONDENTS

The Labor Policy Association (LPA) respectfully submits this brief *amicus curiae* with the written consent of the parties.[1] The brief urges this Court to affirm the holding of the court of appeals below that paid union organizers and members who, acting under their union's direction and control and in return for valuable monetary consideration from the union, sought positions with a nonunion employer in order to engage in organizing and pursue other union objectives vis-a-vis the targeted employer, were not "employees" within the protection of the

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[1] Letters of consent have been filed with the Clerk of the Court.

National Labor Relations Act. Thus, the brief supports the position of the Respondents, Town & Country Electric, Inc., and Ameristaff Personnel Contractors, Ltd., before this Court.

INTEREST OF THE *AMICUS CURIAE*

The Labor Policy Association (LPA) is an organization of more than 220 of the nation's largest private sector employers. Since its founding in 1939, LPA has been concerned exclusively with the development and implementation of laws and public policies relating to employment and labor relations. Its mission is to ensure that laws and policies affecting human resource practices in the private sector are sound, practical, and responsive to the realities of the modern workplace.

LPA's member companies have been at the forefront of efforts to move beyond the tooth-and-claw tactics that too often have characterized worker-management relations in this country, and to achieve greater employee involvement in, and cooperation with, management in both union-represented and nonunion workplaces. At a time when these cooperative efforts have begun to show significant, positive results, LPA members view with serious concern the reversion by some labor unions to the adversarial approach reflected in the practice known as "salting," which lies at the heart of the controversy in this case.[2]

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[2] The recent growth and current extent of "salting" programs are discussed by Dr. Herbert R. Northrup of the Wharton School, University of Pennsylvania, in a study entitled "Salting the Contractors' Labor Force: Construction Unions Organizing with NLRB Assistance," 14 *Journal of Labor Research* 469 (1993).

Combining elements of espionage, provocation, entrapment, and harassment, union salting programs such as the one involved in this case represent a regression to the most primitive means of pursuing union goals. The participants in the salting program in this case were paid by their union to infiltrate a nonunion employer's work force. They made a commitment to the union, enforceable on pain of discipline, that once they had secured jobs with the targeted employer, they would use those positions to carry out union objectives that were plainly at odds with the employer's interests, and that they would abandon the jobs and the employer immediately whenever the union so directed them.

By holding, in this and other cases, that paid participants in such union salting programs are "employees" entitled under the National Labor Relations Act ("Act") to protection against discharge or denial of employment by the employers they have targeted in their schemes, the National Labor Relations Board ("NLRB") has stripped any concept of loyalty or faithfulness to one's employer from the meaning of the term "employee" under the Act.

LPA members are concerned that such NLRB holdings—and their implicit approval of union salting programs—promote a view of employment that not only is at odds with the traditional legal concept of employment, but is incompatible with the more cooperative relationships that U.S. employers, workers, and worker representatives must achieve if America is to maintain its position in an increasingly competitive global economy.[3] Accordingly, as

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[3] *See generally* Edward E. Potter and Judith A. Youngman, *Keeping America Competitive: Employment Policy for the Twenty-First Century* (1994).

employers of over 11 million Americans, LPA's member companies have a significant interest in the issues presented for the Court's consideration in this case.

STATEMENT OF THE CASE

The facts are set forth in the brief of the Respondents. The key facts relevant to the issues addressed in this brief *amicus curiae* may be summarized as follows:

This case involves paid organizers and members of the International Brotherhood of Electrical Workers (IBEW) who sought positions with a nonunion electrical contractor, Town & Country Electric, Inc., pursuant to a program the IBEW calls its "salting" program. The union normally prohibits its members from taking jobs with nonunion contractors, but under the salting program, it encourages and pays professional organizers and other members to seek and accept positions with nonunion firms that the union has targeted for organizing or other activities in pursuit of union objectives. Participants in this program—known as "salts" in the union's parlance —are subject to a number of requirements set out in the union's "Job Salting Organizing Resolution." [4]

Under the resolution, salts are obligated to treat "organizing the unorganized" as their "first obligation." [5] They are required to report to the union's

[4] The court of appeals noted that the union members involved in this case "were subject to [IBEW] Local 292's job salting organizing resolution." *Town & Country Elec., Inc. v. NLRB*, 34 F.3d 625, 629 (8th Cir. 1994). The text of that resolution is set forth in full in the administrative law judge's decision in *Waco, Inc.*, 316 NLRB No. 9, slip op. at 5 (January 23, 1995).

[5] *Id.*

business manager for assignment to a targeted employer. If and when they secure positions with a nonunion firm, they are required to "promptly and diligently carry out their organizing assignments, and leave the employer or job immediately upon notification." [6] For the time they spend in the nonunion employer's work force, the union pays its salted agents the difference between union scale and the targeted employer's wage rates, as well as an allowance for travel expenses.

Lest there be any doubt about the binding nature of the requirements it imposes on participants, the union's job salting resolution concludes by stating that:

> [A]ny member accepting employment by a nonsignatory [*i.e.*, nonunion] employer, except as authorized by this RESOLUTION, shall be subject to charges and discipline as provided by our Constitution and By-laws.[7]

The IBEW targeted Town & Country for salting in accordance with this program after learning that the company was seeking journeymen electricians for a project at a Boise Cascade paper mill in International Falls, Minnesota. At the union's direction or encouragement, about a dozen of its members, including two full-time IBEW officials, presented themselves at a Minneapolis hotel where Town & Country had arranged to interview applicants. Only one of these individuals—a Malcolm Hansen—was hired for the Boise Cascade project.[8] Hansen dutifully began

[6] *Id.*

[7] *Id.*

[8] Technically, Hansen was placed on the payroll of Ameristaff Personnel Contractors, Ltd., a staffing services firm that

organizing efforts as soon as he arrived at the job-site, and he was discharged within a few days. He was paid more by the union than by the Respondents for his efforts at the Boise Cascade project site.

The NLRB found that the Respondents fired Hansen because of his union activities, rejecting their claim that he had carried on those efforts during working time in violation of company rules. The Board also found that the full-time organizers and other IBEW members who attempted to salt Town & Country's work force were denied interviews because of their union affiliation. And, because it concluded that those individuals all were "employees" within the protection of the National Labor Relations Act, the Board held that the Respondent's actions violated Sections 8(a)(1) and (3) of the Act. 29 U.S.C. § 158(a)(1) and (3) (Supp. 1995).

On review, the Eighth Circuit denied enforcement of the Board's order. It concluded that the paid union organizers and other salted IBEW agents involved in this case were not "employees" entitled to the Act's protection. Following decisions of the Fourth and Sixth Circuits, and applying traditional principles of agency law, the court of appeals noted that "an agent is subject to a duty not to act on behalf of a person or entity whose interests conflict with those of the principal in the matters in which the agent is employed." [9]

The Eighth Circuit found it significant that the full-time IBEW organizers in this case sought posi-

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Town & Country had engaged to help it recruit electricians for the project.

[9] *Town & Country Elec., Inc.*, 34 F.3d at 628.

tions with Town & Country only to advance the union's interests.[10] Similarly, the court noted that the other salts, in applying for the positions, acted under the union's direction and control—as exemplified by their commitment to carry out the assignments the union had given them and to leave the targeted employer immediately whenever the union so instructed.[11] In the court's view, the union's control over the salted agents, and particularly over their continued presence on the jobs, precluded finding them to be true "employees." [12]

SUMMARY OF ARGUMENT

The court of appeals' conclusion that the salts in this case were not "employees" within the meaning of the National Labor Relations Act accords not only with well-established principles of statutory construction and common-law concepts of employment, but also with sound public policy. Thus, since the Act "confers rights only on *employees*, not on unions or their nonemployee organizers," *Lechmere, Inc. v. NLRB*, 112 S. Ct. 841, 845 (1992) (emphasis in original), the court below clearly was correct in holding that the Respondents did not violate the Act by refusing to hire or retain these paid union agents.

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[10] *Id.* at 628-29.

[11] *Id.* at 629.

[12] The court thus distinguished the "salts" covered by its holding in this case from "typical job applicants," who, it indicated, may simultaneously be loyal both to a union and to a nonunion employer. 34 F.3d at 628-29. It also distinguished the "salts" from "those who, in addition to performing the work they were employed to do, zealously seek to persuade their fellow employees to join their union." *Id.* at 629.

Given the nature of union salting programs, it is readily apparent that the interests of a union that sends out paid salts to infiltrate an employer's work force are inherently in conflict with the interests of the targeted employer. Indeed, the very essence of salting is to place union agents in positions they can use to place employers at a disadvantage, while claiming the protective shield of "employee" status under the National Labor Relations Act.

Because the Act contains no meaningful definition of the term "employee," it must be inferred that Congress used that term to denote "the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Insurance Co. v. Darden*, 112 S. Ct. 1344 (1992). And, as the court below correctly recognized, such traditional employment relationships entail an element of loyalty that does not and cannot exist when the putative servants are obligated to, and paid by, another entity to use their positions with the principal to advance the conflicting interests of that other entity. *H.B. Zachry Co. v. NLRB*, 886 F.2d 70, 72 (4th Cir. 1989); *NLRB v. Elias Bros. Big Boy, Inc.*, 327 F.2d 421, 427 (6th Cir. 1964); Restatement (Second) of Agency §§ 226, 387, 394 (1957).

Extending the Act's protection to paid union salts also runs counter to the NLRA's fundamental purpose: to promote industrial peace by providing mechanisms through which employees may decide freely whether to join unions and engage in collective bargaining and other forms of concerted activity, or "to refrain from any or all such activities." 29 U.S.C. §§ 151, 157. The goals of industrial peace and worker-management cooperation are not well served

by allowing unions to twist the Act's protections for "employees" into weapons for their paid agents to use against employers. Such tactics represent the industrial equivalent of Cold War, and can only serve to thwart the Act's overriding purposes.

Nor is the cause of employee freedom of choice advanced by a policy that condones a union's use of paid agents to infiltrate an employer's labor force and carry on organizing activities while pretending to serve in the same capacity as ordinary employees. Were an employer to send its paid agents to a union hall masquerading as ordinary members, with instructions to engage in surveillance and counter-organizing activities on management's behalf until such time as the employer ordered them to stop, the NLRB certainly would not hesitate to find that the employer had unlawfully interfered with the right of real employees to decide for themselves whether to support the union or not. Union salting activities, such as those held protected by the NLRB in this and other cases, represent an exact counterpart of such employer interference, and are equally destructive of the rights of the real "employees" Congress enacted the NLRA to protect.

ARGUMENT

THE COURT OF APPEALS CORRECTLY HELD THAT PAID UNION "SALTS" WHO SEEK OR ACCEPT POSITIONS WITH AN EMPLOYER AT THEIR UNION'S DIRECTION AND UNDER ITS CONTROL, FOR THE PURPOSE OF CARRYING OUT UNION OBJECTIVES THAT CONFLICT WITH THE EMPLOYER'S INTERESTS, ARE NOT "EMPLOYEES" WITHIN THE PROTECTION OF THE NATIONAL LABOR RELATIONS ACT.

The Court must decide in this case whether the National Labor Relations Act—a statute designed to promote industrial peace through employee freedom of choice regarding union organization and collective bargaining—accords protected "employee" status to paid union "salts" who seek to infiltrate an employer's work force to carry out the union's objectives vis-a-vis the employer for as long as the union so directs, and then abandon the positions immediately when the union gives them the signal. We submit that both sound statutory construction and good public policy support the conclusion of the Fourth, Sixth, and Eighth Circuits that the Act's protection does not extend that far.

A. "Salting" by Paid Union Agents Inherently Conflicts with the Targeted Employer's Interests.

A full appreciation of the implications of the NLRB's holding that the Act's protection for "employees" extends to paid union salts requires an understanding of salting programs such as the IBEW program involved here. The nature and purposes of such programs are well documented in published literature and reported decisions.

Salting is not a new union practice, but it has become an increasingly common one in recent years.

See Northrup, 14 Journal of Labor Research at 469-475. In the construction industry, in particular, the building trades unions have seized upon salting as a strategy to offset membership losses and try to regain the market share that unionized firms have lost to "open shop" (primarily nonunion) contractors over the past two decades. In addition to the IBEW, the International Brotherhood of Boilermakers, etc. (IBB) and United Brotherhood of Carpenters and Joiners (UBCJ), among other unions, have adopted aggressive salting programs in the last few years. *Id.*

In a publication describing its own salting program, the IBEW explained that it derived the name "salting" from an analogy to "the process of 'salting' mines in order to artificially enrich them by placing valuable minerals in some of the working places." IBEW Special Projects Department, *Salting as Protected Activity Under the National Labor Relations Act* 1 (March 1993). In a case involving the IBEW program, NLRB Administrative Law Judge Raymond P. Green questioned whether the union was aware of "the irony of the salted mine analogy." *Sullivan Electric Co.*, NLRB Case No. 26-CA-16107 (February 1, 1995), JD (NY)-04-95, slip op. at 3, n. 3. As Judge Green pointed out:

> The purpose of salting a mine is to defraud a prospective buyer or investor. Here, the employer is claiming that the Union's attempt to salt the job site by inserting members on the job, is similarly a fraudulent scheme to get people on the job who do not really intend to become employees.

Id.

In that same case, Judge Green listed three goals that he found to be reflected in the IBEW salting program, which he said could be either separate or overlapping:

> 1. To put union members on a job site so as to enable the Union to organize the Company's employees in order to gain recognition either voluntarily or through a Board election; or
>
> 2. To get union people on the job and create enough trouble by way of strikes, lawsuits, unfair labor practice charges and general tumult, so that the non-union contractor walks away from the job; or
>
> 3. If number 2 doesn't work, to create enough problems for the employer by way of unfair labor practice charges, Davis Bacon, OSHA or legal allegations requiring legal services so that even if the employer doesn't walk away from the job, he will be reluctant to bid for similar work in the local area ever again.

Id. at 5. *See also Consolidated Electrical Service, Inc.*, NLRB Case No. 3-CA-18188, JD (NY)-11-95 (February 9, 1995), slip op. at 4-5.

Administrative Law Judge Green based his conclusions as to the program's objectives in part on the IBEW's booklet, *Salting as Protected Activity*, cited above. Among the excerpts he quoted from the booklet is a statement that employers "can often be stung by [salters' use of] falsified job applications designed to conceal union employment and/or membership until after an initial cadre of salts have been hired." *Id.* at 2, quoted in *Sullivan Electric*, slip op. at 5.

In another passage Judge Green found revealing, the IBEW booklet describes an operation in which

salts were used to generate unfair labor practice charges against a targeted nonunion employer. According to the booklet, this accomplished several purposes, including:

> the addition of several high-priced, non-productive journeymen (attorneys) to [the employer's] payroll;
>
> the exposure of [the employer] to substantial backpay and interest liability plus fringe benefit accruals, if any;
>
> the exposure of [the employer] to its own employees, its customers, and the community as an alleged labor law violator.

The booklet clearly portrayed these accomplishments as beneficial to the union's interests vis-a-vis the salted employer. *Salting as Protected Activity* at 9-10, quoted in *Sullivan Electric* slip op. at 4.

The IBEW booklet also states that "covert placement of salts or the enlistment of current employees is often only the initial step in a salting program and is only the beginning of the organizing effort in any event." *Salting as Protected Activity* at 14 (emphasis in original). It goes on to describe how salts are expected to carry on surveillance against an employer:

> The employer should be watched closely for the commission of even minor ULPs [unfair labor practices] and evidence, including affidavits, should be carefully accumulated. (Remember that you have six-months in which to file charges).

Id.

The IBEW booklet leaves no question about the tactical purpose of such surveillance activities:

> A time may come when the [union] will want to pull its salts and supporters out on a minority ULP strike to encourage the hiring of temporary replacements, set the stage for an unconditional offer to return, and for further actions.

Id.

Thus, the salts are used to gain information on which the union can base claims that the targeted employer has committed unfair labor practices, which the union will then claim caused or prolonged strikes by its "salts and supporters." That, in turn, will allow the union to insist that the strikers be granted reinstatement upon request. The stage is thereby set for the salts to engage in further harassing tactics from within the employer's work force.

After reviewing these features of the IBEW's salting program in *Consolidated Electrical Service*, Administrative Law Judge Green commented that it was apparent that the union and the salts "planned to engage in work stoppages at the job site and to look for reasons to justify such actions." Slip op. at 5. He continued:

> With this type of predisposition, . . . the search for a reason to justify a work stoppage already planned, can lead to the strong temptation to "create" such a reason.

Id.

Another IBEW publication makes clear that setting up unfair labor practice charges as an excuse to justify work stoppages is not the only purpose for which salts are expected to engage in information-gathering. It sets forth detailed instructions to salts on making notes at all times, what to note, and how to process complaints to government agencies. IBEW Special Projects Department, *Union Organi-*

zation in the Construction Industry, Journeymen Edition, excerpted by Professor Northrup in 14 *Journal of Labor Research* at 485-87. Among other things, salts are instructed to gather information and report to the union on co-workers' names, phone numbers, and home addresses; rates of pay and company policies; employee complaints; possible violations of law by the employer; and "obvious traits of owners or managers" such as "expensive cars, life styles, [and/or] personal problems." *Id.*

The lengths to which some IBEW salts will go to carry out their espionage assignments are revealed by the facts of *Arrow Flint Electric Co., Inc.* NLRB Case No. 7-CA-35675, JD (MI)-215-94 (September 28, 1994). In that case, a professional organizer drawing a $54,000 annual salary from the IBEW wangled a job with a small nonunion firm by fabricating references and past experience and lying to the firm's owner that he had four children to support, no job, no health insurance, and income only from his wife's waitressing job and unemployment insurance. He reported to work on the first day wearing a microphone concealed in a ballpoint pen. He used the hidden microphone to record the owner's reaction when he told her he planned to talk to her other employees about forming a union. He then used the recording of the owner's reaction (that he "wouldn't be happy" with the firm and had better move on) as a basis for an unfair labor practice charge filed with the NLRB.

The *Arrow Flint* case illustrates why some unions, particularly in the construction industry, take the view that salting is a "win-win" proposition for them. From the union's perspective, it can "win" through salting either by organizing a nonunion con-

tractor's employees or by driving the nonunion firm out of business, thereby reducing competition for unionized firms. As the administrative law judge pointed out, the salt's objective was to "get his 'foot in the door' so that he could create a situation and use the results thereof." *Id.*, slip op. at 21, n. 19).[13] And, as the judge further noted, the costs of defending an NLRB complaint and paying backpay and interest to discharged salts can be fatal to small contractors like Arrow Flint, which had only five or six employees. *Id.*

An apt, overall characterization of salting is found in the words of NLRB Administrative Law Judge Joel Harmatz, who described the practice as "a form of entrapment reminiscent of other 'blackmail' devices." *Sunland Construction Co.*, 309 NLRB 1224 (1992) (ALJ decision at 1246). Particularly distressed about the use of NLRB procedures and protections in salting schemes, Judge Harmatz asked rhetorically whether the NLRB had not been "conscripted as an unwitting conspirator in the effort to achieve union goals . . . through pressures, rather than through . . . procedures preserving [employees'] freedom of choice." *Id.* Yet he concluded that NLRB precedents forced him to hold that an employer violated the Act by refusing employment to salts who used such tactics, and on review, all five NLRB members agreed.

Against this background, there can be little doubt that the interests sought to be advanced through

[13] In a similar vein, the court of appeals noted in this case that a paid union salt "may even relish being discharged, because he then can file an unfair labor practice charge, claiming that he was terminated because of his organizing activities. *Town & Country Elec., Inc.*, 34 F.2d at 629.

union salting programs such as the IBEW's program are inherently in conflict with the interests of the employers targeted for salting. It is also clear on the facts of this case that, to the extent such conflicts existed, the salts were obligated to give the union's interests priority over any contrary interests of the employers.

B. The Court of Appeals Correctly Concluded that the Inherent Conflict of Interests Between the Salts and the Targeted Employer in this Case Precluded a Finding that the Salts Were "Employees" within the Meaning of the NLRA.

Like other federal statutes relating to employment, the National Labor Relations Act purports to define "employee" in circular language that never says directly what an "employee" is.[14] As the court below correctly noted, in the face of such unhelpful definitions, courts must infer that Congress meant the term "employee" to refer to "the conventional

[14] Section 2(3) of the Act, 29 U.S.C. § 152(3), states:

The term "employee" shall include an employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Insurance Co.*, 112 S. Ct. at 1348 (interpreting the equally circular definition of "employee" in the Employee Retirement Income Security Act).

When the relationships between the paid union salts and the Respondents in this case are measured against the traditional elements of a master-servant relationship, it is readily apparent that they do not fit within that category. An essential ingredient of a master-servant relationship is at least a minimum degree of loyalty to the master. As the court below recognized, this does not rule out concurrent employment with more than one entity, but it does preclude the servant from using his or her relationship with Entity A to promote the interests of Entity B with respect to matters in which B's interests are in conflict with A's. *Town & Country Elec., Inc.*, 34 F.3d at 628, citing Restatement (Second) of Agency §§ 226, 387 and 394 (1957).[15]

As demonstrated in the foregoing section, however, such a conflict of interest inherently exists when a union sends paid salts to seek "employment" with a business entity that the union seeks to organize, drive out of business, or discourage from bidding

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[15] In a variation on the agency argument, Administrative Law Judge William F. Jacobs held that "salts" were not bona fide employees because their applications made it obvious that they were not actually seeking work. The "salts" were not listed on the union's "out-of-work" roster and made no effort to record their previous work histories on their applications, indicating that their only objective was to generate unfair labor practices or "salt" the employer. *Goodless Electric Co., Inc.*, NLRB Case No. 1-CA-31249 et al, JD (MA)-22-95 (March 2, 1995), slip op. at 22-26.

on work in competition with unionized employers. Indeed, the whole purpose of salting is to create situations in which salts' positions with employers can be exploited to promote the union's interests with respect to matters in which the union's interest are at odds with the employers'. *Accord H. B. Zachry Co. v. NLRB*, 886 F.2d 70, 72 (4th Cir. 1989); *NLRB v. Elias Bros. Big Boy, Inc.*, 327 F.2d 421, 427 (6th Cir. 1964).

Moreover, the facts of this case underscore the virtual inevitability of such conflicts, as it is clear that the salts were obliged to give their salting assignments their highest priority, until such time as the union ordered them to abandon the job. This level of control by the union left the salts with no way of according the Respondents the minimum degree of loyalty necessary to establish an employment relationship, even if they had wanted to.

C. Extending the NLRA's Protection of "Employees" to Paid Union Salts Runs Counter to the Act's Central Purposes of Promoting Industrial Peace and Employee Freedom of Choice.

The NLRB's contrary holding—in effect, that "employee" status under the NLRA entails no obligation of loyalty to the employer—can only serve to undermine the Act's basic goal of promoting industrial peace. The trust and cooperation needed to make worker-management cooperation a reality—whether through collective bargaining or through other legitimate means of employee participation in workplace decision-making—cannot readily be achieved in an atmosphere tainted by the organized deception and conspiratorial tactics that are the essence of union salting programs, as detailed above.

Moreover, as Administrative Law Judge Harmatz lamented in *Sunland Construction*, extending the Act's protection to salts encourages unions to seek to achieve their goals "through pressures, rather than through . . . procedures preserving [employees'] freedom of choice," 309 NLRB at 1246, thereby perverting another of the Act's fundamental purposes. From the earliest days of the Act, the Board has held that employers thwart employee freedom of choice when they send their agents to infiltrate unions posing as employees. *See e.g., J.P. Stevens v. NLRB*, 380 F.2d 292, 296 (2nd Cir. 1967), *cert. denied*, 393 U.S. 836 (1968) (holding that the employer's electronic surveillance of union organizers' motel rooms and recruitment of anti-union employees to attend union meetings violated § 8(a)(1)). Such interference is no less obnoxious to the Act's basic purpose when the deception is carried out by paid union agents instead of by employer agents.

CONCLUSION

For the reasons stated above, the court of appeals' holding that the paid union salts in this case were not "employees" within the protective ambit of the National Labor Relations Act should be affirmed.

Respectfully submitted,

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April 19, 1995

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